



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

November 6, 1992

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FEDERAL COMMUNICATIONS COMMISSION
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Donna R. Searcy, Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

NOV 09 1992

MAIL BRANCH

ORIGINAL
FILE

Re: In the Matter of Amendment of
the Commission's Rules Establishing
New Personal Communications Services
GEN Docket No. 90-314
ET Docket No. 92-100

Dear Secretary Searcy:

Enclosed please find an original and eleven (11) copies
of Comments of the Pennsylvania Public Utility Commission in the
above-captioned matter.

A copy has been provided for each of the Commissioners.

Sincerely,

Ellen M. Averett
Assistant Counsel

For the Pennsylvania
Public Utility Commission

Enclosures

No. of Copies rec'd 6 + 11
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20544

NOV 09 1992

MAIL BRANCH

In the Matter of :
:
Amendment of the Commission's : GEN Docket No. 90-314
Rules to Establish New Personal : ET Docket No. 92-100
Communications Services :

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COMMENTS OF THE
PENNSYLVANIA PUBLIC UTILITY
COMMISSION

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION:

The Pennsylvania Public Utility Commission ("PaPUC") or "Commission") is the state agency responsible for regulating the rates and service of all local telephone companies operating within the Commonwealth of Pennsylvania. The PaPUC hereby submits its comments before the Federal Communications Commission ("FCC") in the above-captioned proceeding.

SUMMARY OF PaPUC'S POSITION

The PaPUC believes that PCS has great potential for providing consumers with constant and ubiquitous access for instantaneous and diverse communications services. The Commission believes that such innovative technology should be encouraged. Nevertheless, if PCS is not effectively managed, the Local Exchange Company ("LEC") local loop, containing various subsidies which provide universal service, could be jeopardized. The PaPUC believes that PCS should be advanced as follows:

First, five licensees should be authorized per market area to ensure adequate compensation and a variety of PCS services and innovation. Second, each licensee should be allocated 20 MHz spectrum blocks to deploy the new services. The incumbent cellular license holders should be barred from providing PCS in their service areas. However, the LECs should be permitted to offer PCS in their license service areas, provided that the states can regulate intrastate PCS, with non-structural safeguards and Open Network Architecture ("ONA") requirements mandated for these providers. To foster a competitive marketplace, multiple and/or joint licenses and license consolidations should be prohibited.

Third, service area size should be set up as the boundaries established for cellular services. As an alternative, if cellular boundaries are not viable, LATA boundaries would provide natural incentives for PCS providers to integrate their systems with the wire network. Fourth, a competitive bidding process with restrictions for license resale would best ensure bona fide licensees and strengthen the new market. Fifth, unlicensed low power PCS technologies would enhance the diversity and rapid introduction of some new services, but existing microwave users must be compensated if they are moved from their designated band. Last, but most important, is the regulatory classification and treatment of PCS. The PaPUC firmly believes that PCS should be classified as a common carrier service with safeguards to prevent discrimination and cross-subsidization in place.

INTRODUCTION

On August 14, 1992, the Federal Communications Commission ("FCC") issued a Notice of Proposed Rulemaking ("NPRM") and Tentative Decision to establish new personal communications services ("PCS"). The FCC proposes to define PCS as a "family of mobile or portable radio communications services which could provide services to individuals and business, and be integrated with a variety of competing networks."¹ Further, the FCC states that PCS covers a wide variety of communications services that are essentially independent of the user's location and contain some form of wireless component to provide mobility. Thus, PCS frees consumers from the physical constraints of a wholly wired telecommunications network, and uses call numbers linked to the individual rather than to a particular station or location. These services can be provided through the existing public switched network or through alternative local networks such as cable television systems.

The NPRM solicits comments on a whole host of PCS issues, including the number of PCS providers, the size of spectrum blocks, service area size, block allocations, licensing procedures, unlicensed devices, and regulatory treatment of PCS services. The PaPUC supports the enhancement of PCS technology, but is concerned that the structure and regulation of PCS must be fully

¹In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, FCC GEN Docket No. 90-314.

addressed prior to its implementation.

DISCUSSION

The PaPUC believes that the deployment of PCS technologies should be fostered once the FCC establishes ground rules on licensing procedures, service area, spectrum allocation and relocation, and regulatory classification for PCS. The Commission comments on these issues with a belief that PCS can be fostered in a competitive but regulated environment.

I. Number of Providers

The FCC has tentatively concluded that there should be at least three licensees per market area, but solicits comment on whether four or five licensees would better stimulate competition. The PaPUC believes that five PCS operators should be authorized per market area to ensure adequate competition and a wide range of PCS services and innovation. The more competitors in a particular market, the more innovative and lower priced the new PCS services will become. In contrast, if only three service providers per market are allocated, a larger provider could more easily dominate the market and hinder the growth of competition. Further, the Commission is also concerned that a proper allocation of spectrum be made to enhance the number of licensees who may compete in providing PCS services.

II. Special Licensing Rules

When allocating licenses, the FCC recommends special rules for cellular license holders and LECs. The FCC tentatively concludes that incumbent cellular license holders should be barred from

acquiring PCS licenses in their cellular service areas. The PaPUC supports the cellular bar because of the established market power possessed by cellular providers and their imbedded plant that could dominate the market and squelch competition.

The FCC has taken a different position with regard to LEC provision of PCS services. Unlike its position with cellular providers, the FCC tentatively concludes that LECs can provide PCS services in their service territory. Initially, the FCC maintains that PCS will be a complement to wireline services, but its growth could be threatened without efficient interconnection with the LECs' local loop facilities. Eventually, the FCC believes that PCS will be a strong competitor or perhaps substitute to the wirebased LEC network.

The PaPUC agrees with the FCC that the LECs should be able to provide PCS services in their service territories, as long as the states are able to regulate the intrastate PCS services, and the non-structural safeguards as instituted in Computer III and ONA architecture are in place. The Commission believes that LECs would then be encouraged to structure their networks to enhance the development of PCS services, if they are permitted to compete in their home markets. Moreover, the Commission believes that state oversight and imposition of safeguards will help protect against cross-subsidization and discrimination by the LECs. In addition, the Commission believes that in connection with state regulation, the FCC proposal to grant PCS providers a federally protected right to interconnection with the public switched network, will enhance

the LECs' ONA obligations to prevent LEC discrimination.

With these protections in place, the PaPUC submits that the LECs should be put on an even playing field with other providers. Thus, the PaPUC recommends that the LECs be provided with the same frequency allocation as designated for all other licensees, and that they acquire their allocation through the same licensing procedures established for other potential providers. However, the Commission does not recommend this position if the states are not permitted to regulate intrastate PCS services and non-structural safeguards are not required, because the potential for discrimination and cross-subsidization is too great. In that event, the PaPUC would bar LECs from providing PCS services in their service areas.

In addition, the Commission believes that to further prevent domination by any one PCS provider, joint or multiple licenses should not be permitted. Moreover, the Commission believes that intramarket license consolidation should be prohibited so that market competition can be maintained. However, as the PCS market matures, the Commission submits that this issue should be revisited.

III. Size of Spectrum Blocks

The PaPUC believes that each PCS licensee be provided with enough spectrum to be competitive with existing telecommunications services as well as new PCS services to be deployed. The FCC proposes three options to allocate spectrum to each licensee including 25, 30 and 40 MHz blocks. Presently, the FCC favors 30

MHz spectrum blocks for each licensee, which compares favorably with the 25 MHz allocated to a cellular licensee. The PaPUC believes that 20 MHz blocks are preferable and would permit the FCC to license more competitors in the identified spectrum. Nevertheless, if PCS services are to share spectrum with incumbent fixed microwave operations, the total capacity of spectrum available to PCS services would be limited. Therefore, a larger total spectrum allocation for PCS services is needed.

IV. Service Area Size

In addition to individual spectrum blocks, the FCC must also establish the total area size in which licensees will operate. The FCC addresses the issue of service area size for PCS licenses and tentatively concludes that service areas should be larger than the initial allocations of 734 rural service areas and metropolitan service areas as assigned to cellular service. The FCC suggests four options, from 488 basic trading areas to nationwide service areas. After reviewing all of the options, the PaPUC believes that Option 1 would provide the least economies of scale, while option 4 would provide the most. The inverse would be true for participation by the largest number of competitors. Options 2 and 3 represent more of a trade off approach, with the LATA criteria perhaps promoting better integration with the imbedded telephone network. Nevertheless, the PaPUC submits that the 734 cellular trading areas, which are smaller than the lata boundaries, would best benefit the growth of competition for PCS services, because less infrastructure and costs would be needed in each service area.

Further, smaller areas would help prevent dominance and discrimination by any one provider. The Commission believes that as the market for consolidation in the cellular industry has evolved because of greater economies of scale, the initial high costs and delays experienced by the cellular industry would be eliminated. Thus, the PaPUC believes that the PCS market will similarly evolve, but on an expedited schedule and at less cost. In addition, the Commission believes that it is easier to consolidate service areas than to break them down into smaller areas.

If the cellular proposal is not viable, the Commission would select as an alternative the LATA proposal, because the LATA configuration would provide natural incentives for PCS providers to integrate their systems with the wire network, and would remove barriers raised by service area allocations crossing several LATA boundaries.

V. Licensing Procedures

The FCC also solicits comments on the appropriate licensing procedure for PCS services and tentatively concludes that comparative hearings would delay the implementation of services and be too costly. Under this approach, hearings would be held to determine which licensee was best suited economically and viably to receive a license. The long delays and significant costs associated with comparative hearings hampered and vastly prolonged the advancement of the cellular industry. The PaPUC has reviewed the comparative hearing procedure and believes that this is not the

best approach. Instead, the Commission suggests that a competitive bidding process with restrictions for resale would best ensure that bona fide licensees would use the licenses. However, Congress must pass enabling legislation for the competitive bidding process. If this alternative is not available, the Commission advocates the use of a lottery system with restrictions for resale and requirements proving financial viability.

All of the options have flaws. The PaPUC suggests that the FCC attempt to reduce the costs and delays associated with lotteries by requiring only minimal information on the license application and giving the winning applicant, by either competitive bidding or lottery, 30 or 60 days to meet financial, technical or other eligibility requirements.

VI. Unlicensed Devices

In addition to licensed PCS services, the FCC tentatively concludes that some forms of low power PCS technologies, e.g., private use applications, including cordless telephones, may best be put on an unlicensed basis. The FCC proposes that spectrum be allocated for the use of unlicensed PCS devices in the 1910-1930 MHz band. The FCC will divide 20 MHz in this band into a 10 MHz block for broadband technologies, a four channel 5 MHz block and a fifty channel 5 MHz block. Further, these blocks could be overlaid on each other, which would help avoid conflicts with incumbent users and better utilize spectrum space.

The PaPUC believes that the FCC's approach would enhance the rapid introduction of new PCS technologies, by permitting the

manufacturers to experiment with and directly market to the general public, products using new designs and technologies, without the delays associated with the licensing of a radio service. However, the Commission believes that interference with existing fixed microwave users must be minimized. Further, existing fixed microwave users should be compensated if they have to move from the designated band. The Commission suggests that the FCC may want to add a charge on unlicensed PCS devices, as defined in the NOPR² to compensate existing PCS users who must move from their current band.

VII. Regulatory Classification

The regulatory classification of a nationwide PCS network is most important to its success. The FCC believes that PCS should be minimally regulated, both on the federal and state level. The FCC is considering labeling PCS as a land mobile service, which would statutorily preempt state regulation. The FCC seeks comments on whether PCS should be classified a common carrier service or a private land mobile service and on the effects of each status.

The PaPUC believes that PCS should be classified as a common carrier service. Under common carriage, PCS would be subject to just and reasonable rate requirements by both the federal and state jurisdictions. PCS providers would also have a statutory obligation to serve users on a non-discriminatory basis. Providers would also have to provide interconnection of their networks to

² Id. at 8.

resellers and to joint users. Common carriers also are subject to foreign ownership bar of the Communications Act³, a federal excise tax, and transmitter fees. No such requirements exist for a private land mobile service.

The PaPUC firmly believes that if a common carriage classification is not mandated for PCS services, safeguards to prevent discrimination and cross-subsidization will not work. Instead, the Commission believes that competition will only be enhanced if providers have an obligation to serve, and such service is effectively managed through federal and state regulation. Further, a foreign ownership ban will enhance the potential for the revenues being put back into the PCS network and not flowing through to the PCS industry overseas. PCS, if unregulated, could siphon off, in toto, LEC customers from low-cost, high return areas, and would wreck havoc on the established wirebased network. Thus, if PCS is not effectively managed, the LEC local loop network, containing various subsidies which provide universal telephone service, could be jeopardized. Therefore, the Commission believes that the classification of PCS services as common carrier services is crucial.

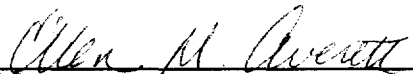
CONCLUSION

The PaPUC submits that PCS technology and innovations should be encouraged, but is concerned that the wireless network

³ 47 U.S.C. Sec. 310 (b).

is properly structured and managed. Eventually, the PCS network could totally bypass the LEC local loop network. Therefore, the Commission believes that all efforts must be made to put the LECs on an even playing field with other licensees, provided that adequate state regulatory oversight and non-structural safeguards are in place to prevent dominance or discrimination by any one provider. The PaPUC recognizes that funding for universal service and other subsidies are embedded in the wirebased local telephone service. Thus, the Commission attempts to embrace this new technology, but believes that the FCC must provide an adequate structure for the new PCS network to work together with and preserve the LEC local loop.

Respectfully submitted,


Ellen M. Averett
Assistant Counsel

Veronica A. Smith
Deputy Chief Counsel

John F. Povilaitis
Chief Counsel

Counsel for Pennsylvania
Public Utility Commission

P.O. Box 3265
G-28 North Office Building
Harrisburg, PA 17105-3265
(717) 787-4945

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